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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Assaf DEKEL
Serial Number: 10/031,450
Filing Date: August 6, 2002
Title: Method and Apparatus for Spinal Procedures
Art Unit: 3733
Examiner: Davis, Daniel J.

Mail stop amendment
Honorable Commissioner of Patents and Trademarks
POB 1450
Alexandria Virginia 22313-1450

RESPONSE TO "NON-RESPONSIVE AMENDMENT"

Sir:

This letter is in response to an Office Action dated July 20, 2006, in the above referenced application. The Examiner states that the timely submission under 37 CFR 1.129(a) filed on May 14, 2006 is not fully responsive to the prior Office Action, dated December 14, 2005, because the response does not address the issue of the drawings.

The applicant does not understand why the response filed on May 14, 2006 was considered non-responsive, because that response did address the issue of the drawings. The Office Action of December 14, 2005 stated that "The drawings are objected to under 37 CFR 1.83(a) because they fail to show how the elbows 204 are attached to the device. (Applicant may argue that the elbows are not attached.)" The Office Action also quoted MPEP § 608.02(d), stating that any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. In the response filed on May 14, 2006, the applicant stated, on the bottom of page 10 and the top of page 11: "It is optional for elbows 204 to be attached to the device, and the method of attachment, if any, is not shown in Fig. 2, to maintain clarity of the drawing. If elbows 204 are attached to the device, they may be attached, for example, using any of the methods shown for attaching elbows 304 in Fig. 8A, or described on page 19, lines 4-14. The applicant believes it is unnecessary, and might be confusing, to also include these details in connection with elbows 204 in Fig. 2."

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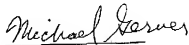
The applicant's agent, Michael Gerver, spoke to Mr. Eduardo Robert, the Examiner's supervisor, by telephone on August 15, 2006. Mr. Robert told the applicant's agent that the Examiner, Mr. Davis, was no longer working there, and Mr. Robert was unable to offer an explanation for why Mr. Davis considered the response filed on May 14, 2006 to be non-responsive with regard to the objection to the drawings. Mr. Robert advised the applicant to file a response to the present Office Action, pointing out where the response filed on May 14, 2006 addressed the objection to the drawings.

To avoid any possible question as to whether the drawings satisfy the requirements of 37 CFR 1.83(a) and MPEP § 608.02(d), the applicant wishes to emphasize that elbows 204 are not an essential feature of the invention. The elbows are not one of the elements included in claim 1. The application specifically states, on page 7, lines 32-33, that "A pair of rasp elbows 204 are *optionally* provided to guide rasp 202 at a proper angle through spinal channel 106." (emphasis added) All the more so, the means, if any, by which elbows 204 are attached to the device is not an essential feature of the invention. In some embodiments of the invention, the elbows are not attached to the device at all. The Examiner stated, in the Office Action of December 14, 2005, that it would be considered responsive to the objection to the drawings if the applicant argued that the elbows were not attached to the device, and that argument was indeed made, in the response of May 14, 2006, as quoted above. Fig. 2 may be considered an illustration of an embodiment of the invention in which elbows 204 are not attached to the device. In other embodiments of the invention the elbows are attached to the device. The means by which the elbows are attached to the device in one such embodiment is shown in Fig. 8A, and means for attaching the elbows are described on page 19, lines 4-14, as noted in the response filed on May 14, 2006.

In view of the above remarks, the applicant submits that the response filed on May 14, 2006, together with this response, is fully responsive to the Office Action dated December 14, 2005. The applicant submits that the claims submitted in the amendment of May 14, 2006 are patentable over the prior art. If the Examiner does not agree regarding one or more of the claims, but is of the opinion that a telephone conversation may forward the present application toward allowance, applicant respectfully requests that the Examiner call the undersigned at 1 (877) 428-5468. Please note that this is a direct *toll free* number in the US that is answered in the undersigned's Israel office. Israel is 7 hours ahead of Washington.

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Respectfully submitted,
Assaf DEKEL

A handwritten signature in cursive script, reading "Michael Gerver", written in dark ink.

Michael Gerver
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August 17, 2006

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